



**Bakke
Grinolds
Wiederholt**

ATTORNEYS AT LAW

December 8, 2023

Via ECF

Michael E. Grans, Clerk of Court
U.S. Court of Appeals for the Eighth Circuit
111 South 10th Street
St. Louis, MO 63102

Re: *Poemoceah v. Morton County*, No. 21-1207
FRAP 28(j) Response Letter

Dear Mr. Gans,

Defendants-Appellees Morton County, Kyle Kirchmeier, Paul Laney and Benjamin V. Swenson hereby respond to Plaintiff-appellant Eric Wayne Poemoceah's Fed. R. App. P. 28(j) filing regarding *Nieters v. Holtan*, 83 F.4th 1099 (8th Cir. 2023).

Nieters is factually distinguishable from the present case. The plaintiff in *Nieters* was allegedly unaware of prior dispersal orders, was fully compliant, was not violating any law, nor evading or resisting arrest.

In the present case, as explained in the district court's decision, Poemoceah's pleadings and responsive briefing on the motion to dismiss acknowledge law enforcement were present to evacuate protesters from the encampment pursuant to evacuation orders, that Poemoceah proceeded toward officers and then fled as officers proceeded toward him, and Poemoceah was still fleeing when officers tackled him from behind to apprehend him. (App. 35-36, ¶¶21-23.) Unlike the allegations in *Nieters*, Poemoceah was defying evacuation orders, actively resisting arrest and attempting to flee when he was tackled.

Randall J. Bakke*^{Δ+nv}
rbakke@bgwatlaw.com
Shawn A. Grinolds*^o
sgrinolds@bgwatlaw.com
Bradley N. Wiederholt*^o
bwiederholt@bgwatlaw.com
Grant T. Bakke*^x
gbakke@bgwatlaw.com
David R. Phillips*
dphillips@bgwatlaw.com

* Licensed in North Dakota

^o Licensed in Minnesota

^Δ Licensed in South Dakota

+ Board Certified Civil Trial
Specialist by National Board
of Trial Advocacy

□ Fellow-Litigation Counsel of America

v Board Certified Civil Practice
Advocacy by National Board
of Civil Pretrial Practice Advocacy

x MBA

Bakke Grinolds Wiederholt, Attorneys

P.O. Box 4247 · Bismarck, ND 58502-4247

300 West Century Ave · Bismarck, ND 58503

p 701.751.8188 · f 701.751.7172

Very truly yours,

/s/ Shawn A. Grinolds

Shawn A. Grinolds
Counsel for Defendants-Appellees
Morton County, Kyle Kirchmeier,
Paul Laney and Benjamin V. Swenson

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. 28(j) the body of the foregoing letter does not exceed 350 words.

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2023, I electronically submitted the foregoing to the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system and that ECF will send a Notice of Electronic Filing (NEF) to all participants who are registered CM/ECF users.

/s/Shawn A. Grinolds

Shawn A. Grinolds

Counsel for Defendants –Appellees Morton County,

Kyle Kirchmeier, Paul Laney, and Benjamin V. Swenson